

# **EXHIBIT 4**

# HAYNES BOONE



May 30, 2023

**Via Email**

Debevoise & Plimpton LLP  
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**Re: *GMO Gamecenter USA Inc. and GMO Internet, Inc. v. Whinstone US, Corporation*, No. 1:22-cv-5974 (S.D.N.Y.)**

Dear Counsel:

We write in response to your May 24, 2023 letter (the “Letter”), in which you accuse our firm (Haynes Boone) and our clients (GMO Internet Group, Inc. and GMO Gamecenter USA, Inc., collectively, “GMO”) of “alter[ing] or destroy[ing]” evidence in the form of GMO’s mining machines as part of GMO’s machine repair process. Your Letter’s inflammatory accusations are built upon a wildly inaccurate and disingenuous presentation of the facts concerning GMO’s actions and mining machine repair process.

To begin, your client Whinstone US, Inc. (“Whinstone”) has repeatedly complained about GMO’s purported *failure* to repair (*i.e.*, alter) its mining machines, and has itself removed thousands of GMO’s machines from operation. Specifically, Whinstone (i) admittedly removed thousands of GMO’s miners from operation in March/April 2022, *see* ECF No. 34, Whinstone’s Answer to Third Amended Complaint; (ii) justified its removal of GMO’s miners on the basis that such miners were “non-functioning” as a result of GMO’s “fail[ure] to maintain” and “repair” such machines, *see id.*; and (iii) six months following Whinstone’s removal, threatened to remove and scrap GMO’s operating miners on the basis that they are in “disrepair[.]” *see* Bob Scher’s November 18, 2022 Letter to Leslie Thorne. So, you can imagine our surprise when you accused our firm and GMO of improperly moving, altering, and destroying GMO’s mining machines as part of GMO’s repair process in its typical course of business. How can Whinstone reasonably accuse GMO of improperly altering or destroying its machines as part of its ordinary machine repair process, when Whinstone removed (and later, threatened to remove and scrap) GMO’s machines without GMO’s consent on the basis that GMO failed to repair them? Your client cannot have it both ways.

Your assertions are particularly jarring in light of Whinstone’s consistent and active participation in the machine repair process—a process discussed at length with Magistrate Judge Parker at the parties’ February 28, 2023 settlement conference. As you know, Whinstone’s staff removes any machines requiring repair from the racks in Building A, restores GMO’s repaired machines to

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operation on the racks, prepares a designated disposal container for GMO, requests that GMO place any non-working machines or machine parts in that disposal container, and empties the disposal container on a daily basis. As such, your Letter accuses GMO of improperly repairing and disposing of non-working machines or machine parts while Whinstone is simultaneously assisting in the repair process and itself is managing the disposal of defective machines or machine parts. Again, Whinstone cannot have it both ways.

Furthermore, as you know, GMO's machine repair process is vital to its mining business operations and ability to profit from mined bitcoin – including its ability to mitigate damages due to Whinstone's breaches of the Texas Agreement. This process will not cede to your clients' demonstrated ambitions to disrupt GMO's operations.

In addition to (at the very least) presenting an incomplete factual context, your Letter makes several flagrant misstatements of fact.

*First*, GMO has not “significant[ly] increase[d] [its] activity” at Whinstone's Texas facility since Haynes Boone and GMO visited the facility in March 2023. Letter at 1. Indeed, there has been no change in the pace of GMO's repair activity at the Texas facility since Haynes Boone visited the Texas facility in March 2023. Your claim that there were short periods – each over a year ago – during which GMO did not have employees onsite is not only flatly incorrect,<sup>1</sup> but even if there were short periods between August 2021 and May 2022 during which GMO employees were not onsite, that does not demonstrate an increase in GMO activity at the Texas facility after March 2023. In fact, and as your Letter conveniently leaves out, GMO representatives were at the facility starting on January 6, 2023 and through the entire month of February 2023, demonstrating a continuity of GMO's presence at the Texas facility both before and after Haynes Boone's visit in March 2023.

*Second*, GMO has not “removed most of the unused machines” “piled on the floor next to the wall in Building A.” Letter at 1. Rather—and as Whinstone is well-aware—any non-operating machines were placed on the floor by Whinstone for the express purpose of having GMO test and repair them. When machines are found to be in working condition, they are restored to operation in Building A with assistance from Whinstone's staff. As such, with the exception of machines that are tested and found to be inoperable (which, as described above, are disposed of at Whinstone's request and by Whinstone itself), operating machines are placed back in operation in Building A by Whinstone.

Despite your Letter's misleading, inaccurate, and highly inflammatory accusations, in furtherance of the parties' efforts to ensure the efficient preservation and collection of relevant evidence, we can confirm, in response to your Letter's request, *see* Letter at 1-2, that GMO has preserved all relevant evidence concerning the location, functionality, and condition of its machines, including

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<sup>1</sup> GMO representatives visited the facility on, among other days, February 28, 2022, March 1, 2022, and between March 24 and March 30, 2022.

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its real-time data and diagnostic information concerning the performance of its miners. In response to your proposal to arrange for consultants to visit the facility in furtherance of preservation efforts prior to June 20, *id.* at 2, GMO does not believe that sending a consultant on its behalf for this purpose is necessary, but we are open to discussing this proposal further with you. To aid in our resolution of this dispute, we also reiterate our demand, stated in our May 23, 2023 letter to you, that Whinstone produce all video footage or recordings of (i) GMO's representatives at the Texas facility and (ii) Building A and Building X of the Texas facility.

Nothing in this letter shall be deemed a waiver of any rights, claims, remedies or defenses to which GMO may be entitled at law or in equity, all of which are expressly reserved.

Best regards,



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